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## SENATE BILL No. 170

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-28-28-4; IC 6-3.1-32.

**Synopsis:** Community investment tax credits. Establishes a community investment tax credit against state tax liability for investments that: (1) qualify for a federal new markets tax credit against federal income tax liability; and (2) are made by a certified development entity that agrees: (A) to dedicate 100% of the certified development entity's investments for which the certified development entity may receive a federal new markets tax credit for reinvestment in low income communities in Indiana; (B) to invest at least 80% of the certified development entity's total assets in low income community businesses in Indiana; and (C) to continue to reinvest at least 30% of the last state certified investment in eligible businesses for a period of at least 14 years after the last credit allowance date for the certified development entity's last state certified investment.

**Effective:** January 1, 2008 (retroactive).

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January 8, 2008, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 170

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 5-28-28-4, AS ADDED BY P.L.222-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 4. As used in this chapter, "tax credit" means a state tax liability credit under any of the following:

- (1) IC 6-3.1-7.
- (2) IC 6-3.1-13.
- (3) IC 6-3.1-13.5.
- (4) IC 6-3.1-26.
- (5) IC 6-3.1-27.
- (6) IC 6-3.1-28.
- (7) IC 6-3.1-30.
- (8) **IC 6-3.1-32.**

SECTION 2. IC 6-3.1-32 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]:

### **Chapter 32. Community Investment Tax Credit**

2008

IN 170—LS 6510/DI 113+



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1       **Sec. 1. As used in this chapter, "affiliate" means the following:**

2           (1) A parent entity that owns a controlling interest in a  
3           federally qualified community development entity.

4           (2) Any subsidiary of a parent entity described in subdivision  
5           (1) that qualifies as a federally qualified community  
6           development entity.

7       **Sec. 2. As used in this chapter, "applicable percentage" means**  
8       **five percent (5%) for each credit allowance date.**

9       **Sec. 3. As used in this chapter, "certified development entity"**  
10       **refers to a federally qualified community development entity that**  
11       **is certified by the Indiana economic development corporation**  
12       **under section 20 of this chapter.**

13       **Sec. 4. As used in this chapter, "credit allowance date" has the**  
14       **meaning set forth in Section 45D(a)(3) of the Internal Revenue**  
15       **Code.**

16       **Sec. 5. As used in this chapter, "eligible business" means a**  
17       **business that:**

18           (1) qualifies as a low income community business; and

19           (2) is located in Indiana.

20       **Sec. 6. As used in this chapter, "federal credit" refers to a**  
21       **federal new markets tax credit provided under Section 45D of the**  
22       **Internal Revenue Code.**

23       **Sec. 7. As used in this chapter, "federally qualified community**  
24       **development entity" refers to a qualified community development**  
25       **entity (as defined in Section 45D(c) of the Internal Revenue Code)**  
26       **that has an allocation of federal credits.**

27       **Sec. 8. As used in this chapter, "federally qualified equity**  
28       **investment" refers to a qualified equity investment (as defined in**  
29       **Section 45D(b) of the Internal Revenue Code) that qualifies a**  
30       **federal taxpayer for a federal credit.**

31       **Sec. 9. As used in this chapter, "low income community**  
32       **business" refers to a business that qualifies as a qualified active**  
33       **low-income community business (as defined in Section 45D(d)(2)**  
34       **of the Internal Revenue Code).**

35       **Sec. 10. As used in this chapter, "pass through entity" means a:**

36           (1) corporation that is exempt from the adjusted gross income  
37           tax under IC 6-3-2-2.8(2);

38           (2) partnership;

39           (3) trust;

40           (4) limited liability company; or

41           (5) limited liability partnership;

42       **that is not subject to state tax liability.**

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1        **Sec. 11.** As used in this chapter, "reinvestment in low income  
2 communities in Indiana" refers to the use of the assets of a  
3 federally qualified community development entity for:

4        (1) a capital or equity investment or loan to an eligible  
5 business;

6        (2) an equity investment in or a loan to a federally qualified  
7 community development entity that is located in Indiana;

8        (3) the delivery of financial counseling or other services to a  
9 business in or resident of Indiana; or

10       (4) a purchase from another federally qualified community  
11 development entity of loans that are made to an eligible  
12 business;

13 that qualifies as a qualified low-income community investment (as  
14 defined in Section 45D(d)(1) of the Internal Revenue Code).

15       **Sec. 12.** As used in this chapter, "state certified investment"  
16 refers to a federally qualified equity investment that is certified by  
17 the Indiana economic development corporation under section 21 of  
18 this chapter as eligible for a state credit.

19       **Sec. 13.** As used in this chapter, "state credit" refers to a credit  
20 granted under this chapter against state tax liability.

21       **Sec. 14.** As used in this chapter, "state tax liability" means a  
22 person's total tax liability that is incurred under:

23       (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

24       (2) IC 6-5.5 (the financial institutions tax); and

25       (3) IC 27-1-18-2 (the insurance premiums tax);

26 as computed after the application of the credits that under  
27 IC 6-3.1-1-2 are to be applied before the credit provided by this  
28 chapter.

29       **Sec. 15.** As used in this chapter, "taxpayer" means a person that  
30 has state tax liability.

31       **Sec. 16.** (a) Each taxable year, a person that holds a state  
32 certified investment on a credit allowance date that falls within the  
33 taxable year is entitled to a community investment tax credit  
34 against the holder's state tax liability for the taxable year.

35       (b) The amount of the credit provided by this section for a  
36 taxable year is the amount equal to:

37       (1) the amount of the state certified investment held by the  
38 person on the credit allowance date; multiplied by

39       (2) the applicable percentage for the credit allowance date.

40       (c) A taxpayer may claim the credit provided by this section  
41 only to the extent that the taxpayer does not claim another credit  
42 against state tax liability under any other law for the same state

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certified investment.

Sec. 17. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 18. (a) If the amount of a state credit for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to not more than three (3) subsequent taxable years. The amount of the state credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a state credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of an unused state credit.

Sec. 19. To apply a state credit against the taxpayer's state tax liability, a taxpayer must claim the state credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. A taxpayer claiming a state credit shall submit to the department a copy of the certification letter issued by the Indiana economic development corporation under section 21 of this chapter for the state certified investment that entitles the taxpayer to a state credit. In addition, the taxpayer shall submit to the department any additional information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the state credit.

Sec. 20. (a) The Indiana economic development corporation shall establish a program to certify federally qualified community development entities as certified development entities.

(b) An applicant must apply to the Indiana economic development corporation for certification in the manner and on the forms prescribed by the Indiana economic development corporation.

(c) The Indiana economic development corporation shall certify an applicant as a certified development entity if:

(1) the applicant is a federally qualified community development entity;

(2) the applicant or its affiliates have a record of successfully

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providing capital or other financing to eligible businesses located in Indiana;

(3) the applicant or its affiliates have a record of successfully reinvesting federally qualified equity investments in Indiana;

(4) the applicant and its affiliates, by agreement with the Indiana economic development corporation, commit to dedicate one hundred percent (100%) of the applicant's and affiliates' qualified equity investments for which the applicant and its affiliates have received an allocation of federal credits for reinvestment in low income communities in Indiana;

(5) the applicant and its affiliates, by agreement with the Indiana economic development corporation, commit to continue to loan to or otherwise reinvest in eligible businesses, for at least fourteen (14) years after the last credit allowance date for the entity's last state certified investment, at least thirty percent (30%) of the applicant's and affiliates' state certified investments; and

(6) the applicant, by agreement with the Indiana economic development corporation, commits to invest at least eighty percent (80%) of the applicant's aggregate gross assets (including reserves) in eligible businesses.

**Sec. 21. (a) The Indiana economic development corporation shall establish a program to certify federally qualified equity investments as state certified investments.**

**(b) The Indiana economic development corporation may certify a federally qualified equity investment as a state certified investment only if:**

**(1) a certified development entity designates the federally qualified equity investment for a state credit in a manner and on the designation form prescribed by the corporation; and**

**(2) the certified development entity that designates the federally qualified equity investment for a state credit and the certified development entity's affiliates are in compliance with the agreements entered into by the certified development entity and its affiliates under section 20 of this chapter.**

**(c) The certification of a federally qualified equity investment under this section applies only to credit allowance dates that occur after the certification is made by the Indiana economic development corporation.**

**(d) If the Indiana economic development corporation certifies a federally qualified equity investment as a state certified investment under this section, the Indiana economic development**

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corporation shall issue a certification letter to the applicant.

**Sec. 22. (a)** An action by the federal government under Section 45D of the Internal Revenue Code to disallow or recapture a federal credit for a qualified equity investment terminates the state credit only to the extent provided under this section.

**(b)** A holder of a state certified investment shall notify the Indiana economic development corporation if the holder's federal credit for the federally qualified equity investment underlying the state certified investment is disallowed or otherwise recaptured.

**(c)** If the federal credit granted for a state certified investment is disallowed or recaptured, the Indiana economic development corporation may:

- (1)** disallow the use of a part of the related unused state credit;
- (2)** recapture a part of the related state credit that has been applied to the state tax liability of a taxpayer; or
- (3)** both disallow under subdivision (1) and recapture under subdivision (2) the state credit.

The maximum percentage of the state credit that may be disallowed and recaptured under this section is the percentage of the total federal credit that is disallowed or recaptured under Section 45D of the Internal Revenue Code.

**(d)** The Indiana economic development corporation shall submit a copy of the corporation's determination under this section to the department.

**Sec. 23. (a)** Before April 1 each year:

- (1)** after the initial year that a federally qualified community development entity is certified as a certified development entity; and
- (2)** before the fifteenth year after the last credit allowance date for the certified development entity's last state certified investment;

the certified development entity shall submit a report to the Indiana economic development corporation on the certified development entity's state certified investments.

**(b)** The report required by this section must include the following:

- (1)** Information on the number and amount of state certified investments and federally qualified equity investments made by the certified development entity in Indiana.
- (2)** A description of each eligible business that has received a state certified investment from the certified development

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entity.

(3) An update on the financial status of each eligible business that has received a state certified investment from the certified development entity.

(4) An update on new jobs, increased wages, total investment, and revenue impact derived from the certified development entity's state certified investments.

(5) The sum of the state credits for which the certified development entity is eligible under this chapter.

(c) The Indiana economic development corporation shall submit a copy of the report required by this section to the executive director of the legislative services agency in an electronic format under IC 5-14-6.

Sec. 24. The Indiana economic development corporation may adopt rules under IC 4-22-2 that the corporation determines are necessary to carry out this chapter, including rules to do the following:

(1) Facilitate the transfer of state credits earned under this chapter.

(2) Certify an investment for a state credit before the investment has received final approval for a federal credit, subject to the condition that the state credit is disallowed if the federal credit is not granted.

SECTION 3. [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]

(a) The definitions in IC 6-3.1-32, as added by this act, apply throughout this SECTION.

(b) IC 6-3.1-32, as added by this act, applies only to:

(1) federally qualified equity investments initially made; and  
(2) taxable years beginning;

after December 31, 2007.

SECTION 4. An emergency is declared for this act.

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